HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.6395 of 2002

Date: 11.07.2007

Between:

P.V. Subba Reddy

….Petitioner

and

The Chief Engineer, National Highways,
Hyderabad and others

….Respondents

HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.6395 of 2002

O R D E R:

The petitioner was awarded the lease to operate toll-gate at KM.323/10 to 324/6 at National Highway No.7, for the year 1994-95. The lease deed between the petitioner and the respondents was executed on a stamp paper of the value of Rs.100/-.

The 2nd respondent addressed letter dated 2.8.2001 requiring the petitioner to pay a sum of Rs.2,99,250/-, being the stamp duty payable on the lease deed. The petitioner challenges the same.

It is urged that the stamp duty was not collected when the lease was in force and, that the demand thereof at 5% is contrary to the provisions of the Indian Stamp Act (for short 'the Act').

The respondents filed a counter affidavit. It is stated that in view of the uncertainty as to the leviability of the stamp duty that prevailed at the relevant point of time, as well as the rates thereof on leases of this nature, regular lease deed on a proper stamp paper could not be executed, and since the controversy stood resolved by the judgment of

this court in W.P.No.4151 of 1995, the petitioner is liable to pay the amount, representing the proper stamp duty.

Heard the learned counsel for the petitioner and the learned Government Pleader for Roads and Buildings.

It is not in dispute that the petitioner was a lessee during the year 1994-95, to operate a toll-gate. The lease deed was executed on a stamp paper worth Rs.100/- and ***ad valorem*** stamp duty was not levied on account of uncertainty in the matter. This court held in W.P.No.4151 of 1995 that stamp duty can be levied on a lease deed, in respect of a toll-gate. Therefore, the petitioner cannot avoid his liability to pay the stamp duty.

There is a controversy as to the rate. While the petitioner asserts that the stamp duty payable is only 3%, the respondents insist that it is 5%. While admitting this writ petition, this court did not grant any stay. It is not known as to whether the petitioner had since paid the amount or not. Even otherwise, the petitioner had to workout his remedies by way of an appeal under Section 56 of the Act, to the extent of disputed amount.

For the foregoing reasons, the writ petition is disposed of directing that in case the petitioner has not deposited the amount covered by the impugned notice, he shall be liable to pay the stamp duty at 3%, within four (4) weeks from today. It shall be open to him to prefer an appeal as regards the balance 2% before the appellate authority. If the petitioner deposits the 3% stamp duty and presents an appeal within 4 weeks from today as regards the balance of 2%, the

appellate authority shall entertain the same without raising any objection as to limitation. In default, it shall be open to the respondent to proceed to recover the amount from the petitioner. There shall be no order as to costs.

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L.NARASIMHA REDDY, J

11th July, 2007.
cvm